

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. GEORGE DULL KNIFE, Defendant.	5:20-CR-50122-JLV ORDER DENYING MOTION TO STRIKE (DOC. 86)
--	--

On June 15, 2021, George Dull Knife, *pro se* Defendant, filed a Motion to Strike the United States' Response to the Motion to Dismiss. Mr. Dull Knife argues the brief was untimely and the United States did not seek leave of the court to file its brief.

JURISDICTION

Defendant is charged in an Indictment with Discharge of a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii); Assault with Intent to Commit Murder, in violation of 18 U.S.C. §§ 113(a)(1) and 1153; and Assault with a Dangerous Weapon, in violation of 18 U.S.C. §§ 113(a)(3) and 1153. The pending Motion was referred to the Magistrate Judge for resolution pursuant to 28 U.S.C. § 636(b)(1)(B) and Judge Jeffrey L. Viken's Standing Order dated April 1, 2018.

FACTUAL BACKGROUND

Mr. Dull Knife filed a Motion to Dismiss on May 28, 2021. (Doc. 74). On June 7, 2021, the United States filed a responsive brief opposing the motion.

(Doc. 81). In his present motion, Mr. Dull Knife requests that the government's untimely response should be stricken because the government failed to seek leave of the court to file its untimely response. (Doc. 86).

Mr. Dull Knife correctly identifies that the government's brief was untimely. Pursuant to Local Rule 47.1 (C), the government's brief was due on Friday, June 4, 2021, and the brief was not filed until Monday, June 7, 2021.¹ The government did not seek leave of the court to submit an untimely brief.

FED. R. CRIM. P. 45, states in relevant part "[w]hen an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion." FED. R. CRIM. P. 45(b)(1). Additionally, the Court has "broad discretion to control the scheduling of events in matters on its docket." Jones v. Clinton, 72 F 3d. 1354, 1361 (8th Cir. 1996).

Here, the court exercises its broad discretion and will not strike the Government's brief, particularity in light of the short delay and the importance of having the issues raised in the dispositive motion fully brief by both parties.

Therefore, the Defendant's Motion to Strike (Docs. 86) is denied.

DATED this 31st day of August, 2021.

BY THE COURT:



DANETA WOLLMANN
United States Magistrate Judge

¹ Although a legal holiday (Memorial Day) fell within the 7 day period that the government had to respond, Rule 45(a)(1)(B) requires that intermediate Saturdays, Sundays, and legal holidays are included.